

Message Text

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PAGE 01 MOGADI 00223 142306Z

12

ACTION L-03

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FM AMEMBASSY MOGADISCIO

TO SECSTATE WASHDC 1625

INFO AMEMBASSY ADDIS ABABA

AMEMBASSY BEIRUT

JUDGE ADVOCATE GENERAL NAVY

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BEIRUT FOR RMO

ADDIS FOR RSO

E.O.211652: N/A

TAGS: CASC

SUBJ: LEGAL COSTS IN MSG CASE

REF: A. STATE 021688; B. MOGADISCIO 147 AND MOGADISCIO 141

1. WE WOULD LIKE TO REQUEST DEPARTMENT'S RE-EXAMINATION ITS REF A DECISION THAT INDIVIDUAL MARINES MUST PAY FINE IN THIS (AND, BY IMPLICATION, FUTURE) CASE OF CRIMINAL PROSECUTION BY GSDR.

2. WE BELIEVE MARINES SHOULD NOT BE LIABLE BECAUSE OF FOLLOWING POINTS:

A. USG HOLDS THAT MARINES, AS TECHNICAL AND ADMINISTRATIVE STAFF, ARE IMMUNE FROM CRIMINAL PROSECUTION BY HOST GOVERNMENT.

B. BECAUSE OF SOMALI LAW, EMBASSY AND USG UNABLE ENFORCE CLAIMED IMMUNITY FOR MSG'S.

C. TO REQUIRE MARINES TO PAY FINE IMPLIES ADVANCE USG DETERMINATION THAT SOMALI COURT WILL MAKE JUDGMENT WHICH ACCORDS

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PAGE 02 MOGADI 00223 142306Z

TO U.S. LAW AND UCMJ. THIS IS UNTENABLE ASSUMPTION IN ABSTRACT

OR EVEN IN MOST RECENT CASE. IN SUBJECT CASE NCOIC AND EMBASSY HAVE RECOMMENDED THAT NO PUNITIVE ACTION BE TAKEN AGAINST MARINES OVER AN ACTION WHICH IN MOST COUNTRIES WOULD BE CONSIDERED A HARMLESS PRANK. IN ANY CASE, FAIR PLAY WOULD INDICATE THAT ANY PUNISHMENT IN SUCH CASES SHOULD BE DETERMINED BY COMPETENT U.S. AUTHORITIES. (PUNISHMENT COULD, BUT WOULD NOT AUTOMATICALLY, BE IDENTICAL TO FINE LEVIED BY SOMALI CRIMINAL COURTS).

D. JAG PAID CIVIL JUDGMENT AND COSTS IN PREVIOUS CASE HERE INVOLVING MSG FENTIMAN (JAG'S 5890 OF 14 DEC 72 AND 3474 OF 24 JAN 73).

E. EMBASSY AND NCOIC HAVE RECOMMENDED THAT NO U.S. PUNITIVE ACTION BE TAKEN AGAINST SGT. PUMPLUN AND SGT. VANDEVENDER IN PRESENT CASE.

3. SITUATION HERE IS SUCH THAT WE HAVE NOT BEEN ABLE OBTAIN CONGRESS OF VIENNA PROTECTION FOR MARINES. POLICY WE WOULD PROPOSE IS THAT USG WOULD BE PREPARED DEFRAID LEGAL COSTS/FINES WHICH ARISE FROM CRIMINAL PROSECUTION OF MARINES. USMC WOULD DETERMINE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN.

4. IN OUR VIEW, THIS PROBLEM RAISES FUNDAMENTAL QUESTIONS OF EQUITY AND CONDITIONS OF SERVICE FOR MSG'S HERE. LONG-TERM SOLUTION TO PROBLEM MAY BE FOUND IN GIVING MSG DIPLOMATIC TITLE AND PASSPORTS (EMBASSY WILL DISCUSS THIS ASPECT IN SEPARATE MESSAGE.). IN MEANTIME, URGE DEPARTMENT AND DOD JOINTLY AGREE ON PROCEDURE WHICH WOULD PROTECT MSG'S FROM UNJUSTIFIED FINANCIAL LIABILITY TO UNPREDICTABLE SOMALI CRIMINAL JURISDICTION.
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